

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL MORGAN, *et al.*,

Plaintiffs,

v.

CITIFINANCIAL MORTGAGE
COMPANY, INC.,

Defendant.

Case No. C06-1072RSL

ORDER GRANTING MOTION
TO AMEND COMPLAINT AND TO
STAY AND REMOVING
CASE FROM ACTIVE CASELOAD

This matter comes before the Court on plaintiffs' motion (1) to amend their complaint to add another set of class representatives who paid fees as part of an ordinary payoff transaction without a prior pending foreclosure, unlike the current named plaintiffs, and (2) to stay this case until after the Supreme Court rules in Wachovia Bank, N.A. v. Watters, 431 F.3d 556 (6th Cir. 2005), *cert. granted*, (June 20, 2006). Oral argument was scheduled on that case on November 29, 2006. Defendant does not oppose the motion.

The Court finds no evidence of bad faith, undue delay, or prejudice to defendant, and no evidence that the amendment would be futile. Accordingly, plaintiffs' request to amend their complaint is granted. Plaintiffs must file their first amended complaint in the docket within ten days of the date of this order. Defendant shall file and serve its answer within twenty days after the stay is lifted.

1 The Court also grants the request to stay the case. Defendant's defense in this case will
2 be based primarily on its contention that plaintiffs' claims must be dismissed in their entirety
3 because they are preempted by regulations of the United States Treasury Department, Office of
4 the Comptroller of the Currency ("OCC"). The Court has stayed four other related cases
5 pending a decision in Wachovia Bank, N.A. The Supreme Court's opinion in Wachovia Bank,
6 N.A. may offer valuable guidance on the preemption issue in an area where the existing case law
7 is relatively scant.

8 Furthermore, the delay in awaiting the Supreme Court's ruling is not likely to be
9 protracted. Finally, once the case is stayed, defendant will not incur additional expenses
10 defending the case. In contrast, if the Court decides the issue now in a manner that conflicts
11 with the Supreme Court's ruling, the parties will be forced to incur additional and needless
12 expenses.

13 For all of the foregoing reasons, plaintiffs' motion to amend and to stay the case (Dkt.
14 #20) is GRANTED. The case shall be stayed until after the Supreme Court rules in the case of
15 Wachovia Bank, N.A. v. Watters, 431 F.3d 556 (6th Cir. 2005), *cert. granted*, (June 20, 2006).

16 It is hereby ORDERED that this action is stayed and shall be removed from the Court's
17 active caseload until further application by the parties or order of this Court. The parties shall,
18 within twenty-one days of the Supreme Court's ruling in Wachovia Bank, N.A. v. Watters,
19 submit a joint report in this case notifying the Court of the outcome of that case, requesting that
20 the case be reopened, and proposing a revised case schedule if necessary.

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22 DATED this 4th day of April, 2007.

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25 Robert S. Lasnik
26 United States District Judge
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